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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,981	01/21/2005	Gerald Adams	J3682(C)	1485
201 7590 03/04/2009 UNILEVER PATENT GROUP 800 SYLVAN AVENUE AG West S. Wing ENGLEWOOD CLIFFS, NJ 07632-3100				
EXAMINER				
VU, JAKE MINH				
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1618				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/521,981

Applicant(s)

ADAMS ET AL.

Examiner

JAKE M. VU

Art Unit

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 9-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of Applicant's Request for Continued Examination and Amendment filed on 01/26/2009.

- Claims 1, 2, 9-11 have been amended.
- Claims 12-20 have been added.
- Claims 6-8 have been cancelled.
- Claims 1-5, 9-20 are pending in the instant application.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/26/2009 has been entered.

Claim Objections

Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim **is withdrawn** in view of Applicant's Amendment.

Double Patenting

Claims 1-5, 9-20 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over copending Application No. 10/521,982 in view of YUUKI et al (JP 08-092043) and BOLICH (US 4,764,363) **are maintained** for reasons of record in the previous office action filed on 04/09/2008.

Note, it is acknowledged that Applicant will consider filing a terminal disclaimer upon allowable subject matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 14 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is a new matter rejection.

Claim 14 recites the newly amended limitation of "free of a sulfonic acid or a salt thereof"; however, the specification as-filed does not provide a written description or set forth the metes and bounds of this phrase. The instant claims now recite limitations which were not clearly disclosed in the specification as-filed and now change the scope of the instant disclosure as-filed. Such limitations recited in the present claims,

introduce new concepts and thus violate the written description requirement of the first paragraph of 35 U.S.C. §112.

Applicant argues that Example 1 is a composition in which a sulfonic acid or salt thereof is absent. The Examiner finds this argument unpersuasive, because Example 1 would not teach or suggest to one of ordinary skill in the art to contemplate not adding a sulfonic acid or salt thereof.

Applicant is required to cancel the new matter in the response to this Office action. Alternatively, Applicant is invited to identify sufficient written support in the original specification for the "limitations" indicated above.

Claim Rejections - 35 USC § 112

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, in which it is unclear what the terms "and their emulsions" encompass is maintained, **is maintained** because clarifying the punctuation into Claim 10 does not clarify the terms "and their emulsions".

Claim Rejections - 35 USC § 102

Claims 1-5, 9, 10, 12, 13, 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by YUUKI et al (JP 08-092043) **are maintained** for reasons of record in the previous office action filed on 04/09/2008, 12/24/2008 and as discussed below.

Note, additional disclosures include: sodium bromate (see [0002]), which is an inorganic neutralizer; other ingredients "can be blend...such as surface-active agent" (see [0031]), would read on the surfactant is optional, thus YUUKI's composition may contain no surfactant; if surfactant is added, then the amount can be as little as 0.01% (see [0032]); non-ionic surfactant (see [0031]); "cationic polymer can be blended in order to raise a feel of hair or the skin" (see [0033]), would read on styling polymer is optional, thus YUUKI's composition may contain no styling polymer.

Note, Applicant's specification disclosed "suitable spray containers are well known in the art and include conventional, non-aerosol pump sprays i.e., "atomisers", aerosol containers or cans having propellant, as described above, and also pump aerosol containers utilising compressed air as the propellant" (see [0065]). Thus, it would have been inherent that aerosol containers and pump aerosol containers utilizing compressed air had to be used to deliver the hair composition.

Claims 1-5, 9, 10, 12, 13, 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by GALLAGHER et al (EP 0424158) **are maintained** for reasons of record in the previous office action filed on 12/24/2008 and as discussed below.

Note, additional disclosures include: triethanolamine (see pg. 6, line 20 and 40) are used as pH adjuster, which reads on neutralizing agents; 2-hydroxyoctanoic acid is disclosed in Examples 4 and 5 (see pg. 6); further examples of less than 2% surfactant are disclosed in Example 5 (see pg. 6); free of styling polymer and sulfonic acid (see pg. 6, Example 5); non-ionic surfactants, such as stearyl alcohol (see pg. 6, Example 5);

"may also comprise....surfactants" (see pg. 3, line 29-31), would read on the surfactant is optional, thus GALLAGHER's composition may contain no surfactant; a cationic conditioner, such as cetyl trimethyl ammonium chloride (see pg. 6, Example 4 and 5).

Note, Applicant's specification disclosed "suitable spray containers are well known in the art and include conventional, non-aerosol pump sprays i.e., "atomisers", aerosol containers or cans having propellant, as described above, and also pump aerosol containers utilising compressed air as the propellant" (see [0065]). Thus, it would have been inherent that aerosol containers and pump aerosol containers utilizing compressed air had to be used to deliver the hair composition.

Claim Rejections - 35 USC § 103

Claims 1-5, 9-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over YUUKI et al (JP 08-092043) in view of BOLICH (US 4,764,363) **are maintained** for reasons of record in the previous office action filed on 04/09/2008, 12/24/2008 and as discussed below.

Note, additional disclosures include: sodium bromate (see [0002]), which is an inorganic neutralizer; other ingredients "can be blend...such as surface-active agent" (see [0031]), would read on the surfactant is optional, thus YUUKI's composition may contain no surfactant; if surfactant is added, then the amount can be as little as 0.01% (see [0032]); non-ionic surfactant (see [0031]); "cationic polymer can be blended in order to raise a feel of hair or the skin" (see [0033]), would read on styling polymer is optional, thus YUUKI's composition may contain no styling polymer.

Note, Applicant's specification disclosed "suitable spray containers are well known in the art and include conventional, non-aerosol pump sprays i.e., "atomisers", aerosol containers or cans having propellant, as described above, and also pump aerosol containers utilising compressed air as the propellant" (see [0065]). Thus, it would have been obvious that aerosol containers and pump aerosol containers utilizing compressed air had to be used to deliver the hair composition.

Claims 1-5, 9-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over GALLAGHER et al (EP 0424158) in view of BOLICH (US 4,764,363) **are maintained** for reasons of record in the previous office action filed on 12/24/2008 and as discussed below.

Note, additional disclosures include: triethanolamine (see pg. 6, line 20 and 40) are used as pH adjuster, which reads on neutralizing agents; 2-hydroxyoctanoic acid is disclosed in Examples 4 and 5 (see pg. 6); further examples of less than 2% surfactant are disclosed in Example 5 (see pg. 6); free of styling polymer and sulfonic acid (see pg. 6, Example 5); non-ionic surfactants, such as stearyl alcohol (see pg. 6, Example 5); "may also comprise....surfactants" (see pg. 3, line 29-31), would read on the surfactant is optional, thus GALLAGHER's composition may contain no surfactant; a cationic conditioner, such as cetyl trimethyl ammonium chloride (see pg. 6, Example 4 and 5).

Note, Applicant's specification disclosed "suitable spray containers are well known in the art and include conventional, non-aerosol pump sprays i.e., "atomisers", aerosol containers or cans having propellant, as described above, and also pump

aerosol containers utilising compressed air as the propellant" (see [0065]). Thus, it would have been obvious that aerosol containers and pump aerosol containers utilizing compressed air had to be used to deliver the hair composition.

Response to Arguments

Applicant argues that the "consisting of" language employed by amended claim 1 in its description of the styling ingredient of the subject hair treatment mousses excludes compositions as described by YUUKI which requires the presence of a sulfonic acid component. The Examiner finds this argument unpersuasive, because Applicant's claim 1 also recites "comprising" and "consisting essentially of", which are open-ended language and could encompass a sulfonic acid. Additionally, only claim 14 is free of sulfonic acid, since claim 14 recites "free of sulfonic acid or a salt thereof".

Applicant argues that there is nothing in GALLAGHER that discloses or suggests hair treatment mousses that contain less than 2% surfactant, wherein contrary to the statement in the previous Office Action, Example 4 contains in excess of 2% of surfactant, as it includes, among other components, from 10.0% of C12-C14 alkyl benzene sulphonate and 4.5% of glucamate DOE 120. The Examiner finds this argument unpersuasive, because these ingredients are not in Example 4. Additionally, as discussed in the previous office action, the amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would

be obvious for a person of ordinary skill in the art to employ and reasonably would expect success. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of Applicant's invention.

Applicant argues that BOLICH fails to cure the deficiencies of the primary citations. The Examiner finds this argument unpersuasive, because the primary citations do not have the deficiencies as argued by Applicant.

Applicant argues that there is nothing in YUUKI, GALLAGHER or BOLICH that suggests the formulation of styling mousses that are both free of styling polymer and contain little or no surfactant as in new claim 19. The Examiner finds this argument unpersuasive, because GALLAGHER disclosed a composition that is both free of styling polymer and contains little or no surfactant.

Telephonic Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAKE M. VU whose telephone number is (571)272-8148. The examiner can normally be reached on Mon-Tue and Thu-Fri 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jake M. Vu/
Primary Examiner, Art Unit 1618